II-189 (Jail) C J.P.R./9-94

(3)

DB(M)

APPEAL OF PRISONER

No 1361/58 Name मनोज कुमार

Father's name पुड़ालन मु॰ - धुटकू. पो. सरकंडा जिला-बिलासपुर (म.प्र.)

Residence 302 भा.द.वि. Age 30 वर्ष

Sentenced to आजीवन कारावास on 26.10.98

Under Section ~~x~~ by उच्च न्यायालय जबलपुर (म.प्र.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement Yes.

2 Date on which copy received _____

3 Date on which Appeal sent 29.10.98

4 Whether the prisoner wishes to be represented or not. हाँ

No 1361/58 Name मनोज कुमार S/o पुड़ालन

Confined in सर्कल Jail बिलासपुर (म.प्र.)

No _____ Dated 29.11 1998

Forwarded to the _____

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

29/10/98

SUPERINTENDENT,
CIRCLE JAIL, BILASPUR

Superintendent

_____ Jail _____

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court

No _____

Forwarded to the

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 2605/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

22-4-2006:-

Mr. V.D. Bajpai, Sr. Advocate with Mr. V.K. Sharma, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

PER L.C. BHADOO, J.

By this appeal under Section 374 (2) of the Cr.P.C., the accused/appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 26-10-98 passed by the 7th Additional Sessions Judge, Bilaspur in S.T. No.307/97 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 and 325 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 6 months and to undergo R.I. for two years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo S.I. for 2 months, respectively.

The case of the prosecution, in brief, is that on 27-4-97 in village Ghutku, P.S. Sarkanda, at about 9 a.m. Bhaga Bai and Judawan were at their residence. Accused/appellant Manoj was also at the residence. The accused after taking the break fast went out of the house and Judawan went for sleep. After some time, the accused came back and enquired about his father from his mother Bhaga Bai, on which Bhaga Bai replied that Judawan is sleeping

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

inside the house. All of a sudden, the accused picked up an iron cycle pump and assaulted Bhaga Bai with the same on her head, as a result of which Bhaga Bai received injury on her head and blood started oozing out of it. The second assault was made on the hand of Bhaga Bai, as a result of which her bone was broken. She started crying. Hearing cries, Judawan came on the spot. The accused also attacked Judawan with the same pump, as a result of which Judawan received injury on head, nose and hands. Brother of the accused namely, Pravin Kumar (PW-1) was informed. He immediately rushed to his house and he took his father and mother to the District Hospital, Bilaspur where Dr. S.K. Chandel (PW-8) examined both injured persons and advised for X-ray. Dr. S. Chatterjee X-rayed injuries of Judawan and Bhaga Bai, on which frontal bone and nasal bone were found fractured. The ulna bone of Bhaga Bai was also found fractured. After treatment, Bhaga Bai was discharged. However, Judawan succumbed to the injuries on 10-5-97.

The constable recorded the statement of Judawan and entered the same in Rojnamcha Sana, copy of which is Ex.-P/20. After receiving merg intimation from the hospital, based on Rojnamcha Sana report, S.H.O. registered FIR Ex.-P/23. After giving notice Ex.-P/2 to the Panchas, Investigating Officer prepared inquest report Ex.-P/3 of the dead body of deceased Judawan. Iron cycle pump, weapon of offence, was taken into possession under Ex.-P/4. Site plan (Ex.-P/5) was prepared during the investigation. The doctor after examination of Judawan prepared injury report Ex.-P/11 and after examination of Bhaga Bai prepared injury report Ex.-P/12. The postmortem of the dead body of the deceased was conducted

[पीछे देखिये

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in the Government Hospital, Bilaspur by Dr. V.K. Verma (PW-9) and he prepared the postmortem report Ex.-P/16 in which he opined that death of the deceased was due to coma, which is the result of fracture of skull bones.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 10 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent.

Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Judawan is not in dispute. Similarly, sustaining of grievous injuries by Bhaga Bai is also not in dispute.

As far as involvement of the accused/appellant in crime in question is concerned, PW-2 Bhaga Bai, mother of the accused, injured witness, is the only eyewitness to the incident. She has stated that on the fateful day at 9 a.m. she along with her husband and the accused took their break fast, thereafter her husband went for sleep and the accused went out of the house. After some time, the accused returned and enquired about his father. When she informed him that his father is sleeping, the accused picked up an iron

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cycle pump and assaulted her on her head and hand, as a result of which her hand's bone was broken and head was lacerated, blood started oozing out of it, on which she raised screams. Hearing screams, her husband came out. In the cross-examination, she has stated that the accused assaulted his father also. In the cross-examination of this witness nothing has been elicited which makes the evidence of this witness untrustworthy or unreliable. She is the mother of the accused and there was no reason before her to implicate her own son in a false case. Moreover, her evidence is corroborated by the evidence of PW-1 Pravin Kumar, brother of the accused and another son of the deceased & PW-2. He has stated that he was informed by the neighbourers that Manoj has assaulted his mother and father, on which he rushed towards the house and saw that his father was lying in injured condition. There were injuries on head, nose, hands and blood was oozing out of the injuries. His mother was also lying in injured condition. Her hand was broken. The accused was present in the house. The above evidence of PW-2 Bhaga Bai is corroborated by the medical evidence according to which injuries were found on the body of the deceased and Bhaga Bai, therefore, we are of the considered opinion that involvement of the accused/appellant in crime in question, i.e. assaulting his father and mother by cycle iron pump is established.

Learned Senior Counsel for the accused/appellant argued that there is nothing in the prosecution evidence to show that the accused assaulted the deceased with the intention to cause his death.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -S2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have perused the evidence of PW-2 Bhaga Bai, which has been mentioned earlier. It has come in the evidence that after taking break fast, the accused went out of the house. After some time, he came and enquired about his father. All of a sudden, he picked up an iron cycle pump and assaulted her with the pump. When she raised cries, Judawan came out, on which he also assaulted Judawan. There is nothing in the evidence which shows that the accused had any animosity or grudge against his parents. From the evidence, it is evident that the accused, without any rhyme or reason, all of a sudden, assaulted his father and mother, that too with an iron cycle pump which was lying in the house. Therefore, inflicting injuries with the intention to cause death is not established. The accused assaulted the deceased with an iron cycle pump all of a sudden, without any preparation or pre-meditation. Moreover, the incident took place on 27-4-97 and the deceased died on 10-5-97 i.e. after 13 days. Therefore, we are of the considered opinion that offence under Section 302 of the I.P.C. is not made out, as such conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC cannot be sustained. On fact, offence under Section 304 Part-II of the IPC is made out against the accused/appellant.

As far as conviction under Section 325 of the IPC is concerned, same is established by the medical evidence and the evidence of PW-2 Bhaga Bai, as she sustained grievous injuries on her hand.

In the result, the appeal partly succeeds and same is partly allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside and he is acquitted of the said charge, instead thereof, the accused/appellant is convicted under Section 304 Part-II of the

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

IPC and sentenced to undergo R.I. for 9 years. Conviction and sentence imposed upon the accused/appellant under Section 325 of the I.P.C. are maintained. The accused/appellant is said to have been in detention since 19-5-97 till today, therefore, the accused/appellant will be entitled for the set off for the above period against sentence imposed upon him.

Sd/-
L.C. BHADOO
Judge

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Sd/-
Dhirendra Mishra
Judge

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